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DEC
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 514

STATES STEAMSHIP COMPANY,

Petitioner,

—VERSUS—

UNITED STATES OF AMERICA, ATLANTIC MUTUAL INSURANCE CO., PACIFIC NATIONAL FIRE INSURANCE CO., and THE DOMINION OF CANADA,

Respondents.

OBJECTIONS OF RESPONDENTS, ATLANTIC MUTUAL INS. CO. AND PACIFIC NATIONAL FIRE INS. CO., TO THE MOTION FOR LEAVE TO FILE BRIEF OF VARIOUS STEAMSHIP COMPANIES AS AMICI CURIAE, IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI.

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Insurance Co.

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Rule 42 (1) of this Court states that motions for permission to file briefs amici in support of petitions for certiorari "are not favored." Rule 42 (3) provides that parties served with such a motion may file objections "concisely stating the reasons for withholding consent."

We have withheld consent to the filing of a brief on behalf of the movants which, together with petitioner, are members of Pacific American Steamship Association, because in our opinion this case is peculiarly inappropriate for the intervention of amici curiae. This

case is of importance to Pacific American Steamship Association only because one of its members has been held liable for the loss of cargo carried on the S. S. "Pennsylvania."

The movants' argument (at p. 2 of its motion) is in effect an argument that the courts below were in error in their concurrent findings that the evidence establishes that the S. S. "Pennsylvania" was unseaworthy through lack of due diligence. This is an issue of importance only to the parties to the litigation. The Court of Appeals dealt with the argument then advanced by the petitioner and now repeated by the movants, that the decision in effect holds that all welded vessels are unseaworthy for a winter voyage, and said (Appendix E, 45a*):

> "The suggestion that our decision puts all welded ships out of business over the northern route is wholly unwarranted."

The movants' argument (at p. 3) that it should be permitted to intervene because of the asserted failure of the Court of Appeals "to give appropriate recognition to the relationship between a steamship company on the one hand and the U. S. Coast Guard and the American Bureau of Shipping on the other hand," involves no question of general interest: it concerns the weight to be afforded the evidence in this case, which is hardly a question which will interest this Court.

The argument which the movants advance as a reason why they should be permitted to interevene (at p.

* Reference to appendices are to those attached to the petition.

3), that the Court of Appeals failed to "distinguish between the 'due diligence' requirements of the Carriage of Goods by Sea Act and the 'lack of privity or knowledge' requirement of the Limitation of Liability statute;" is without any basis. The Court of Appeals considered that issue and said (Appendix E, 38a):

> "The Steamship Company argues that in drawing our conclusions we have set forth a broad rule that in any case where the Steamship Company fails to use due diligence to make the vessel seaworthy at the inception of the voyage, limitation must be denied. We did not so hold."

What the Court did hold was that the evidence in this case establishes that petitioner's managing officers not only were lacking in due diligence but were in privity with the unseaworthiness which caused the vessel's loss. The "impact of the decision below upon practical steamship operation" of which movants complain (at p. 3), is only the impact of a salutary reassertion of the well recognized principle that a vessel owner is not entitled to limitation of its liability for the loss of cargo (or for loss of life—45 seamen lost their lives in this disaster), when its managing officers are in privity with the unseaworthiness which causes the loss.

Respectfully submitted,

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